

INFORMATION FOR SENIOR NURSES AND MIDWIVES

UNFORTUNATELY, MOST NURSE AND MIDWIFE MANAGERS DON'T RECEIVE TRAINING REGARDING THEIR RIGHTS AND OBLIGATIONS DURING DISPUTES.

IS IT LEGAL FOR NURSES AND MIDWIVES ON MY WARD OR UNIT TO TAKE INDUSTRIAL ACTION?

The *Fair Work Act 2009* allows for 'protected industrial action'. This means that it is legal for nurses and midwives to take industrial action – provided all the requirements of that Act are met. This includes, for example, the ANMF providing your employer with the required notice of what action our members may take (either three or five days' notice dependent on the action) – allowing the employer to take the necessary steps to address any health service issues that may arise.

WHAT DOES ANMF RECOMMEND I DO?

In the 2024 EBA, we are seeking wages and conditions that are competitive with the public sector. We are also seeking improved and transparent staffing levels in the form of ratios similar to those in the Safe Patient Care Act (Victoria) and no less than those in the St Vincent's Private Hospitals NSW EBA. These wages, entitlements, ratios and safer patient workloads will ensure the current workforce stays working in nursing and/or midwifery, and St Vincent's Private Hospitals is able to attract people to a meaningful and secure nursing and/or midwifery career.

ANMF understands managers will deal with the campaign in different ways. Some will step forward and lead their staff, others may take a neutral stance and some may endeavour to work cooperatively whilst supporting hospital management's position.

Whatever you choose to do, ANMF strongly encourages you to engage with ANMF staff and Job Reps to minimise any unnecessary impact on patients. Meeting with them to discuss how action can be managed, priorities for admissions and ensuring you are kept up to date with communications will mean that working relationships will remain intact and enable all parties to work together cooperatively after the campaign has ended.

WHAT ARE MY LEGAL OBLIGATIONS?

Protected industrial action is legal and serious legal consequences can follow if a manager is found to have coerced an employee not to take part, or to breach a ban (e.g. open a closed bed). This is called adverse action and under the Fair Work Act the individual manager and employer can both be fined.

ANMF members who are participating in action covered by the protected industrial action bans are entitled to refuse to do that task or tasks, and it would almost certainly be unlawful for management to take action against them. As a manager you may be breaching the Fair Work Act if you counsel, discipline or report a nurse or midwife for taking protected action, or threaten to do those things.

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WHAT ARE MY LEGAL RIGHTS?

You have the same legal rights as the employees you manage. Sometimes as a manager you can feel like the 'meat in the sandwich'. Often managers feel obliged, or are even directed, to oppose the industrial action and ensure as far as possible that the activities of the ward continue. This can then result in conflict with staff on the one hand and management on the other.

You have a right at any time to refuse an unlawful directive, including one that relates to the taking of lawful industrial action.

To avoid potentially breaking the law you should seek confidential advice from ANMF or your solicitor if you are directed to take what might be 'adverse action' against another nurse or midwife. As an ANMF member you are also protected against 'adverse action' for seeking this support. For more information you can go to fwc.gov.au or fairwork.gov.au or contact us directly.

WHAT ABOUT PAY DOCKING?

During previous public sector EBA campaigns, pay docking featured strongly, and on occasions harassment of some employees. Both issues created major rifts between some staff and managers that no-one would wish to see repeated.

Since 2009, the Fair Work Act has provided that employees taking protected industrial action (partial work bans) are not required to have their pay docked. An employer can legally accept the industrial action and continue to pay normally. Employers can dock pay 'proportionally', but only under very strict circumstances and it must be fair. ANMF does not anticipate employers docking pay where it is no longer mandatory.

I AM AN ANMF MEMBER TOO. CAN I PARTICIPATE?

As a nurse or midwife manager, your terms and conditions are substantially, if not solely, set by the agreement ANMF negotiates. You have the same right to participate in the ANMF campaign as every other ANMF member in your workplace.

NB: If you experience any problems, please contact the ANMF immediately on 03 9275 9333, records@anmfvic.asn.au or contact your Job Rep.



Members can legally engage in protected industrial action when advice is provided by ANMF via an EBA campaign update which will be emailed to members' home and work emails.

There are serious consequences if you implement unauthorised industrial action.

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